



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 18, 2012

Mr. William J. VanHorn
DOC 883134
1946 W. U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 12-FC-339; Alleged Violation of the Access to Public Records Act by the City of Muncie

Dear Mr. VanHorn:

This advisory opinion is in response to your formal complaint alleging the City of Muncie ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the City on November 20, 2012. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the City's Animal Shelter on or about October 15, 2012. As of November 20, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the City.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The City is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public

agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Without the benefit of a response from the City to your original request for records or formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the City has not provided a justification for withholding the records at issue here, it is my opinion that it has violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the City violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Phil Peckinpaugh